



[4910-06-P]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA-2008-0059, Notice No. 5]

RIN 2130-AB96

Railroad Workplace Safety; Adjacent-Track On-Track Safety for Roadway Workers

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; delay of effective date and request for comments.

SUMMARY: This document delays the effective date of the final rule published November 30, 2011, and scheduled to take effect on May 1, 2012. The final rule mandates that roadway workers comply with specified on-track safety procedures that railroads must adopt to protect those workers from the movement of trains or other on-track equipment on “adjacent controlled track,” and requests comments on the petitions for reconsideration of the final rule that FRA has received. In response to the final rule, FRA received two petitions for reconsideration that raise a number of substantive issues requiring a detailed response. Accordingly, in order to respond fully to the petitions for reconsideration and for the reasons set forth below, this document delays the effective date of the final rule until July 1, 2013. FRA is establishing a 60-day comment period in order to permit interested parties an opportunity to respond to the submitted petitions for reconsideration.

DATES: The effective date for the final rule published November 30, 2011, at 76 FR 74586, and originally effective on May 1, 2012, is delayed until July 1, 2013. Comments in response to the petitions for reconsideration must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments on the Petitions for Reconsideration: Any comments on the petitions for reconsideration related to Docket No. FRA-2008-0059, Notice No. 4, may be submitted by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, M-33, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Hand Delivery or Courier: Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, M-33, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

Instructions: All submissions must include (1) the agency name and (2) either the docket number for this rulemaking (Docket No. FRA-2008-0059) or the current Regulatory Identification Number (RIN) for this rulemaking (RIN 2130-AB96). Note that all comments received will be posted without change to <http://www.regulations.gov>,

including any personal information provided. Please see the “Privacy Act” heading under the SUPPLEMENTARY INFORMATION section of this preamble.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> anytime, or to the Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Kenneth Rusk, Staff Director, Track Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., RRS-15, Mail Stop 25, Washington, DC 20590 (telephone 202-493-6236); or Anna Winkle, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC-12, Mail Stop 10, Washington, DC 20590 (telephone 202-493-6166 or 202-493-6052).

SUPPLEMENTARY INFORMATION: On November 30, 2011, FRA published a final rule amending its regulations on railroad workplace safety to further reduce the risk of serious injury or death to roadway workers performing work with potentially distracting equipment near certain adjacent tracks. See 76 FR 74586. In particular, the rule requires that roadway workers comply with specified on-track safety procedures that railroads must adopt to protect those workers from the movement of trains or other on-track equipment on “adjacent controlled track.” The effective date of this final rule was to be May 1, 2012. In response to the final rule, FRA received two petitions for

reconsideration that raise substantive issues, requiring a detailed response from FRA. One of the petitions requests a delay in the effective date of the final rule until July 1, 2013, for reasons related to the railroads' safety training schedules. In addition, since the publication of the final rule, it has come to FRA's attention that, while the overwhelming majority of railroads complete their annual training of roadway workers by May 1st of each calendar year, there is at least one railroad that does not complete its training by that date but that would complete it by July 1st of the calendar year. Accordingly, in order to allow FRA appropriate time to consider and fully respond to the petitions for reconsideration and to accommodate all of the railroads' normal training schedules, this document delays the effective date of the final rule until July 1, 2013. Therefore, any requirements imposed by the final rule need not be complied with until July 1, 2013.

Additionally, FRA is establishing a 60-day comment period in order to permit interested parties an opportunity to respond to the petitions for reconsideration related to Docket No. FRA-2008-0059, Notice No. 4. The petitions for reconsideration are available for review in the docket for this rulemaking, and have been assigned identification numbers of FRA-2008-0059-0031 and FRA-2008-0059-0032. FRA's response to the petitions for reconsideration and any comments received on these petitions will be published under a new RIN number (2130-AC37), but will be filed in the same docket.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of FRA's dockets by the name of the individual submitting the comment (or signing the

comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

List of Subjects in 49 CFR Part 214

Occupational safety and health, Penalties, Railroad safety.

The Final Rule

In consideration of the foregoing, FRA delays the effective date of the final rule until July 1, 2013.

Issued in Washington, DC, on March 2, 2012

Karen J. Hedlund,

Deputy Administrator.

[FR Doc. 2012-5667 Filed 03/07/2012 at 8:45 am; Publication Date: 03/08/2012]